

(State of Rajasthan & Others Vs.
Associated Stone Industries (Kotah)
Limited and Another)

Date of Order :: 29th March, 2007

PRESENT

HON'BLE MR. JUSTICE R.M. LODHA
HON'BLE MR. JUSTICE R.S. CHAUHAN

Mr. B.L. Awasthi, Additional Government
Advocate for the appellants

Mr.S.M. Mehta,Sr.Advocate}
with }
Mr. R.S. Mehta }for the
and } respondents
Mr. Anil Mehta }

The State of Rajasthan through Secretary, Department of Mines and its functionaries in the Mining Department have preferred this appeal aggrieved by the order dated 1st July, 1996, whereby the Single Judge set-aside the re-assessment orders at the enhanced rate.

2. Associated Stone Industries (Kotah)

Limited (here-in-after be referred to as "the petitioner") was granted mining lease for an area of 4810.16 acres in Tehsil Ramganj Mandi for quarrying lime stone as building stone. The said mining lease was initially for a period of 10 years commencing from 1st October, 1959. The lease was renewed for a further period of 10 years from 1st October, 1969. The assessment of royalty for the Assessment Year 1974-75 (1.10.1974 to 30.9.1975) and the Assessment Year 1975-76 (1.10.1975 to 30.9.1976) was done at the rate of Rs. 3.00 per tonne under The Rajasthan Minor Mineral Concession Rules, 1959 (for short "the Rules of 1959"). The Rules of 1959 were replaced by the Rajasthan Minor Mineral Concession Rules, 1977 (for short "the Rules of 1977"). The Mining Engineer, Kota sent two notices, both dated 20th January, 1978 to the petitioner for making

the re-assessment of royalty for the Assessment Years 1974-75 and 1975-76 respectively by invoking his power under Rule 42 (1) of the Rules of 1977. Despite objections of the petitioner, the re-assessment was made for the years 1974-75 and 1975-76 by fixing royalty at the rate of Rs. 5 per tonne. The order of re-assessment was challenged by the petitioner by filing the revision petition before the State Government but without any success. The further revision petition filed by the petitioner to the Central Government against the order of re-assessment came to be dismissed and the petitioner filed writ petition before this Court. The Single Judge quashed and set-aside the re-assessment order principally on the ground that pursuant to the Notification dated 5th August, 1975 whereby Schedule I appended to the Rules of 1959

was amended prescribing the sliding rate from Rs. 3 to Rs. 6.50 per tonne, the Director of Mines and Geology who was delegated the powers by the State Government has not fixed the royalty in sliding scale and, therefore, the re-assessment of the royalty at the rate of Rs. 5 per metric tonne for the Assessment Year 1974-75 and 1975-76 was unjustified.

3. The Additional Government Advocate assailed the judgment of the Single Judge on three grounds. Firstly, he submitted that the Notification dated 5th August, 1975 having been published, there was no need to send personal information to each and every lessee. Secondly, he submitted that consequent upon the Notification dated 5th August, 1975 the State Government issued a letter on 13th August, 1975 to the Director directing him to fix the rate of royalty. In relation to the petitioner's

area the rate suggested by the State Government was at Rs. 5 per metric tonne and consequent upon the said letter dated 13th August, 1975, the Director informed all the Mining Engineers about the rate of royalty. According to him by the letter dated 13th August, 1975 the rate of royalty was fixed and nothing more was required to be done. Thirdly, the Additional Government Advocate submitted that the telegram sent by the Director to the Mining Engineer was itself sufficient to fix the rate of royalty.

4. The submissions of the Additional Government Advocate are devoid of any merit. It is not in dispute that the assessment of the royalty for the area of mining under lease with the petitioner was done at the rate of Rs. 3 per tonne under the Rules of 1959. On January 20, 1975, the State Government in exercise of the

powers conferred by Section 15 of the Mines and Minerals (Regulation & Development) Act, 1957 amended the Rules of 1959, more particularly clause (c) of sub-rule (1) of Rule 17. The amended Rule 17 (1) (c) effective from 20th January, 1975 reads thus:

"17 (1) (c)-The State Government may, by notification in the official Gazette, amend, from time to time, the first Schedule so as to enhanced or reduce the rate at which royalty shall be payable in respect of any mineral with effect from such date as may be specified in the notification."

5. The Rules of 1959 were amended by the Rajasthan Minor Mineral Concession (Amendment) Rules 1975. By the said amendment Schedule I prescribing the rate of royalty under Rule 17-1 (b) was amended and thereby the rate of royalty per metric

tonne for sand stone and lime stone of dimensional stone quality was fixed in the sliding scale of Rs. 3 to Rs. 6.50 per metric tonne. That the Director of Mines and Geology has been empowered to fix rate of royalty in the sliding scale and to exercise power to fix rate on volume basis under Rule 17 (1) of the Rules of 1959 is not in dispute. The question before us is: whether in exercise of his powers under Rule 17 (1) of the Rules of 1959, the Director of Mines and Geology has fixed the rate of royalty in the sliding scale as prescribed by the State Government in the Schedule I, or not?

6. According to the State Government by the letter dated 13th August, 1975 the State Government fixed the royalty of lime-stone and sand-stone of dimensional stone quality for the area of Kota, Bundi and Jhalawar Districts at the rate of Rs. 4

per metric tonne and Rs. 5 per metric tonne respectively and pursuant to the said letter dated 13th August, 1975, the Director, Mines, Udaipur sent communication to the Mining Engineer, Kota to recover royalty at the rate of Rs. 4 per metric tonne for the sand-stone and Rs. 5 per metric tonne for the lime-stone of dimensional stone quality. We are afraid, neither the letter dated 13th August, 1975 nor the communication from the Director, Mines to the Mining Engineer, Kota lead to any conclusion that rate of royalty has been fixed in the sliding scale by the State Government or the Director of Mines. As a matter of fact by amending Schedule I by Rajasthan Minor Mineral Concession Rules, 1975 the State Government prescribed rate of royalty in the sliding scale for sand-stone and lime-stone in dimensional stone quality from

Rs. 3 per metric tonne to Rs. 6.50 per metric tonne. It was thereafter for the Director of Mines to fix rate of royalty in the sliding scale in exercise of the power given to him under Rule 17 (1) of the Schedule III which in-fact was never done. In exercise of his powers under Rule 17 (1) and Schedule III, the Director of Mines had to fix the rate of royalty in the sliding scale for sand-stone and lime-stone in dimensional stone quality and that fixation of rate of royalty has to be with effect from some specific date. The communication sent by the Director of Mines cannot be held to be fixation of rate of royalty by the Director of Mines as required under Rule 17 (1) and Schedule III of the Rules of 1959. Without there being any specific order by the Director of Mines fixing the rate of royalty of sand-stone and lime-stone of dimensional

stone quality from the specific date, the re-assessment of the royalty at the rate of Rs. 5 per metric tonne based on some internal communication by the State Government to the Director, Mines or from the Director of Mines to the various Mining Engineers, the assessment of royalty for the Assessment Year 1974-75 and 1975-76 could not have been re-opened.

7. The consideration of the matter by the Single Judge in this regard cannot be said to suffer from any legal flaw warranting interference in the appeal. Special appeal, accordingly, has no merit and is dismissed with no order as to costs.

R.S. Chauhan, J.

R.M. Lodha, J.

DK/-